

CHAPTER NO. 785

HOUSE BILL NO. 3142

By Representative Hargrove

Substituted for: Senate Bill No. 3225

By Senator Kyle

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 8, Part 3, and Sections 9-8-111, 9-8-402(a), 9-8-402(b), 9-8-403, 12-3-214(d), 12-4-109(a)(1)(B)(viii), 29-13-106(e), 29-13-108, and 29-13-109, relative to the Tennessee Claims Commission; and to amend Tennessee Code Annotated, Title 40, Chapter 38, Part 1, relative to communicating monetary resources to victims of crime.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 9-8-111, is amended by adding the following as a new subsection (d) and by redesignating the existing subsections accordingly:

(d) In cases where the loss, damage or destruction is to a motor vehicle and the employee does not have the benefit of insurance coverage for the motor vehicle, the employee shall not be compensated by the state in an amount in excess of five hundred dollars (\$500).

SECTION 2. Tennessee Code Annotated, Section 9-8-307(a)(1), is amended by deleting the following in its entirety:

The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state falling within one (1) or more of the following categories:

and by substituting instead the following:

The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of state employees, as such term is defined in § 8-42-101(3), falling within one (1) or more of the following categories:

SECTION 3. Tennessee Code Annotated, Section 9-8-307(a)(1)(A), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance. In addition, the state may be held liable pursuant to this subdivision for the negligent operation of state owned motor vehicles or other conveyances by persons who are not state employees provided such persons operated the vehicle or other conveyance with the permission of a state employee;

SECTION 4. Tennessee Code Annotated, Section 9-8-307(a)(1), is amended by adding the following new subdivision at the end thereof:

(V) Unconstitutional taking of private property, as defined in § 12-1-202, including intentional state governmental action resulting in a taking other than the

taking of real property and real property rights for the state's system of highways or the state's system of interstate highways;

SECTION 5. Tennessee Code Annotated, Section 9-8-307(a)(2)(A), is amended by deleting the same in its entirety and by substituting instead the following:

(A) The issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, except as provided for in subdivision (a)(1)(V);

SECTION 6. Tennessee Code Annotated, Section 9-8-307(a)(1)(D), is amended by deleting the same in its entirety and by substituting instead the following:

(D) Legal or medical malpractice by a state employee, provided the state employee has a professional/client relationship with the claimant;

SECTION 7. Tennessee Code Annotated, Section 9-8-307(a)(1)(N), is amended by deleting the same in its entirety and by substituting instead the following:

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision that the legislature expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions;

SECTION 8. Tennessee Code Annotated, Section 12-3-214(d), is amended by deleting the words "or constitutional rights" and by substituting instead the words and figures "rights pursuant to § 9-8-307(a)(1)(N)".

SECTION 9. Tennessee Code Annotated, Section 12-4-109(a)(1)(B)(viii), is amended by deleting the words and figures "or constitutional rights" and by substituting instead the words and figures "rights under § 9-8-307(a)(1)(N)".

SECTION 10. Tennessee Code Annotated, Section 9-8-403, is amended by adding the following as a new, appropriately designated subsection:

(_____) If a claimant appeals the decision of a commissioner pursuant to § 9-8-403(a)(1), the claimant shall, in addition to complying with all other requirements for perfecting an appeal, notify the clerk of the commission by filing the notice of appeal with the clerk. The notice shall be accompanied by a corporate surety bond payable to the State of Tennessee in an amount determined by the clerk to be sufficient to defray the cost of preparing the transcript. The bond shall be conditioned to pay the charge for services of the Court Reporter in preparing the transcript of the evidence introduced at the hearing before the commission. In the event the claimant does not obtain the relief prayed in the claimant's appeal, the cost of preparing the transcript shall be taxed against the claimant and shall be paid by the claimant or the surety on the bond filed with the commission.

SECTION 11. Tennessee Code Annotated, Section 9-8-403(a)(1), is amended by deleting the fourth sentence thereof in its entirety.

SECTION 12. Tennessee Code Annotated, Section 9-8-403(a)(2), is amended by deleting the same in its entirety and by substituting instead the following:

(2) A small claims docket consisting of claims satisfying the monetary limit applicable to the General Sessions Court of Davidson County. No Court Reporter shall be utilized nor any record made of these proceedings. These proceedings shall be conducted pursuant to rules and regulations promulgated by the commission. If a claimant consents to having the claimant's claim proceed upon affidavits filed with the commission without a hearing, the state shall be deemed to have waived a hearing on the claim unless the state requests a hearing within sixty (60) days after the claim is filed with, or transferred to, the commission. No appeal may be taken from a commissioner's decision regarding claims appearing on the small claims docket.

SECTION 13. Tennessee Code Annotated, Section 9-8-403(i), is amended by deleting the same in its entirety and by substituting instead the following:

(i) Commissioners shall provide findings of facts and conclusions of law on the disposition of all claims on the regular docket. Except as provided in § 29-13-109, an order disposing of a claim on the small claims docket need not include findings of fact and conclusions of law unless requested by a party. The commission is encouraged to make oral decisions immediately after a hearing on any claim if the commission finds that further deliberation is unnecessary. If a claim is disposed of by an oral ruling, counsel for the prevailing party shall prepare and submit an appropriate order reflecting such ruling. Such order shall include proposed findings of fact and conclusions of law if the claim was heard on the regular docket or if a party requested such findings and conclusions in a hearing on the small docket. Any orders prepared by counsel for the prevailing party shall be submitted to the adverse party for approval.

SECTION 14. Tennessee Code Annotated, Section 9-8-403, is amended by adding the following as a new, appropriately designated subsection:

(_____) In the discretion of the claims commission and by agreement of the parties, all or part of a hearing may be conducted by electronic means.

SECTION 15. Tennessee Code Annotated, Section 9-8-308(a), is amended by deleting all sentences after the first sentence thereof and by substituting instead the following:

The tax shall be collected by the administrative clerk of the claims commission, and all funds collected by the clerk shall be paid over to the appropriate fund, as shall be determined by the State Treasurer. Claims automatically transferred to the claims commission by the Division of Claims Administration pursuant to § 9-8-402(c) due to a failure to honor or deny the claim during the ninety-day settlement period shall not be subject to the privilege tax established by this section. Notwithstanding any limit on the amount which may be awarded to a claimant, the commissioner or the reviewing court shall have the discretion to order that the privilege tax paid pursuant to this section be refunded to a claimant whose claim is determined to be meritorious.

SECTION 16. Tennessee Code Annotated, Section 9-8-402(a), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

The claimant must give written notice of the claimant's claim to the Division of Claims Administration as a condition precedent to recovery except claims for recovery of taxes shall be filed directly with the administrative clerk of the claims commission.

SECTION 17. Tennessee Code Annotated, Section 9-8-402(b), is amended by deleting the same in its entirety and by substituting instead the following:

(b) The claim is barred unless the notice is given within the time provided by statutes of limitations applicable by the courts for similar occurrences from which the claim arises. The filing of the notice by the claimant tolls all statutes of limitation as to other persons potentially liable to the claimant due to the occurrence from which the claim before the commission arises. The applicable statute of limitations for the recovery of taxes shall continue to be six (6) months after the payment of the taxes under protest. For workers' compensation purposes, when voluntary payments of compensation or medical expenses have been paid by the division of claims administration or the administrator of the state's workers' compensation program, a claim to recover any unpaid or further workers' compensation benefits must be instituted in the claims commission within the one-year period prescribed in § 50-6-203, except in those cases provided for by § 50-6-230 or by § 7-51-201. Absent prior written consent of the commission, it is mandatory that any claim filed with the claims commission upon which no action is taken by the claimant to advance the case to disposition within any one (1) year period of time be dismissed with prejudice.

SECTION 18. Tennessee Code Annotated, Section 9-8-307(a)(1)(I), is amended by deleting the semicolon “;” which appears immediately after the word “structures” and by substituting instead a comma “,”.

SECTION 19. Tennessee Code Annotated, Section 29-13-106(e), is amended by deleting the first and second sentences thereof and by substituting instead the following:

No compensation shall be awarded on account of the same criminal act in an amount in excess of eight thousand dollars (\$8,000), except as provided in subsection (h). All awards granted under subsection (a) shall be aggregated in determining this amount.

SECTION 20. Tennessee Code Annotated, Section 29-13-108(c), is amended by deleting the third and fourth sentences thereof and by substituting instead the following:

If a prosecution is pending or imminent for an offense arising out of the crime upon which the claim is based, the division or commission, whichever is applicable, shall suspend all action on the claim upon application of either the District Attorney General or the alleged offender. In such event, the District Attorney General shall notify the division or commission, whichever is applicable, within ten (10) days after completion of any such prosecution. Proceedings may further be suspended in the interest of justice if a civil action arising from such offense is pending or imminent. The division or commission, whichever is applicable, shall notify the claimant of any suspension under this subsection. A District Attorney General who fails to supply the division with the report required in subsection (d) of this section within one hundred eighty (180) days of the division's receipt of the claim shall be deemed to have waived the right to apply for a suspension under this section, unless good cause is shown for such failure.

SECTION 21. Tennessee Code Annotated, Section 29-13-108(d), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

Unless the claim is suspended under subsection (c), the division shall investigate every claim for compensation and shall make every effort to honor or deny each claim within ninety (90) days of receipt of the claim.

SECTION 22. Tennessee Code Annotated, Section 29-13-108(d), is further amended by deleting the next to the last sentence thereof, which reads as follows:

The division is authorized to transfer any claim filed under this chapter to the commission prior to the expiration of the ninety (90) day settlement period.

and by substituting instead the following:

Unless the claim is suspended under subsection (c), the division is authorized to transfer any claim filed under this chapter to the commission prior to the expiration of the ninety (90) day settlement period.

SECTION 23. Tennessee Code Annotated, Section 29-13-108(e)(1), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

Upon filing or transferring a claim for compensation to the commission, the claim shall be considered, determined and subject to appeal in the manner set forth in § 9-8-403 for other decisions of the commission. If a claimant consents to having the claimant's claim proceed upon affidavits filed with the commission without a hearing, the state shall be deemed to have waived a hearing on the claim unless the District Attorney General requests a hearing within sixty (60) days after the claim is filed with, or transferred to, the claims commission.

SECTION 24. Tennessee Code Annotated, Section 29-13-108(e)(1), is further amended by adding the following new sentence at the end thereof:

Notwithstanding any other law to the contrary, if the District Attorney General attends the proceeding, the District Attorney General may present into evidence any police or offense reports and any other reports generated through the District Attorney General's investigation of the claim.

SECTION 25. Tennessee Code Annotated, Section 29-13-108, is amended by adding the following new subsections (g) and (h), and by redesignating the existing subsections accordingly:

(g) Notwithstanding any other law to the contrary, if the division denies a claim on the basis that the claimant does not meet the eligibility requirements for compensation under this part and the claimant appeals the denial to the commission, or if the division transfers the claim to the commission as a result of its inability to honor or deny the claim within the ninety (90) day settlement period, the commission shall consider the claim for the sole purpose of determining whether the claimant meets such eligibility requirements. Such an eligibility requirement may include a determination as to whether the claimant has shown good cause for failing to file the claim within the one (1) year period as prescribed in subsection (a) of this section. Such an eligibility requirement may include a determination as to whether the claimant has shown good cause for failing to file the claim. If the commission determines the claimant meets the eligibility requirements to receive compensation under this part, the commission shall enter an appropriate order reflecting such determination and remand the claim to the division of claims administration for the purpose of determining the amount of compensation to which the claimant is entitled and the manner in

which such compensation shall be paid pursuant to § 29-13-111. Such order shall include the findings of fact enumerated in subdivisions (b)(2)(A)-(H) of § 29-13-109 and in subdivisions (b)(2)(L)-(O) of § 29-13-109.

(h) Notwithstanding § 9-8-406 or any provision of this part to the contrary, the Department of Treasury may, at its sole discretion, submit a report to the commission which explains the department's action on the claim. Any such report shall be filed within the time allowed for the filing of a responsive brief by a party. The department shall serve copies of the report upon the claimant and the District Attorney General. Any such report shall be considered by the commission without oral argument by the department.

SECTION 26. Tennessee Code Annotated, Section 29-13-108, is further amended by deleting the first sentence of the present subsection (g) and by substituting instead the following:

The commission shall attach to its decision all documentation presented in support of a claim for which compensation is awarded, as well as an executed subrogation agreement.

SECTION 27. Tennessee Code Annotated, Section 29-13-109(b)(1), is amended by deleting the same in its entirety and by substituting instead the following:

(b)(1) All decisions granting an award under this chapter shall be in writing and shall set forth the findings of fact and the decision whether compensation is due under this chapter.

SECTION 28. Tennessee Code Annotated, Section 29-13-109(b)(2), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

(2) Except as provided in § 29-13-108(g), the findings of fact shall include, but not be limited to, those enumerated in this subdivision.

SECTION 29. Tennessee Code Annotated, Section 29-13-109(f), is amended by deleting the last sentence thereof in its entirety and by substituting instead the following:

Awards may be amended under the provision of § 29-13-108(j) in furtherance of this policy.

SECTION 30. Tennessee Code Annotated, Title 40, Chapter 38, Part 1, is amended by adding the following as a new, appropriately designated section:

40-38-1. The office of the District Attorney General shall notify in writing each victim of a violent crime who may be eligible for compensation under the Criminal Injuries Compensation Act of the methods by which the victim may obtain such compensation. The written notice shall be substantially in the form and content as prescribed by the State Treasurer. In cases involving the death of such a victim, the notification shall be given to the closest relative to the deceased victim. For purposes of this section, "closest relative" shall have the same meaning as that given in § 34-11-101 (3).

SECTION 31. Tennessee Code Annotated, Section 9-8-307(i), is amended by deleting that subsection in its entirety and substituting instead the following:

(i)(1) Claims that were timely filed against state employees with a Court of Competent Jurisdiction and that fall within the jurisdiction of the claims commission found in subsection (a)(1)(A) shall be dismissed as to the state employees and transferred to the Division of Claims Administration to proceed as a claim against the state provided that the state employees alleged to have acted negligently were, at the time of the incident giving rise to the claim, operating a private motor vehicle within the scope of the employees' office or employment, and the employees' action or inaction was not willful, malicious, criminal or done for personal gain. When a motion for transfer is made the court shall require that notice be given the Attorney General and the state shall be permitted to intervene and respond to the motion. Upon such transfer, the claim shall be considered timely filed with the Division of Claims Administration and the claims commission. Such transfer shall be effected upon an order of dismissal and transfer from the court. Any such transfer must be made within one (1) year of the filing of the original complaint with the court or the passage of this act, whichever is later. Such claims shall be considered by the Division of Claims Administration and the claims commission, as provided by law. This subsection shall be effective for causes of action arising on or after July 1, 1995, pending at the time of passage of this act and causes of action arising on or after the effective date of this act.

(2) Claims which are transferred to the Division of Claims Administration pursuant to this subdivision shall be investigated by the Division of Claims Administration, acted upon or transferred by the division, and acted upon by the claims commission pursuant to the same statutory requirements and procedures as apply to claims originally filed with the Division of Claims Administration.

SECTION 32. Tennessee Code Annotated, Section 9-8-307(i), is amended by deleting that subsection in its entirety and by substituting instead the following:

(i)(1) Claims that were timely filed against state employees with a court of competent jurisdiction and that fall within the jurisdiction of the claims commission found in subsection (a)(1)(A) shall be dismissed as to the state employees and transferred to the Division of Claims Administration to proceed as a claim against the state provided that the state employees alleged to have acted negligently were, at the time of the incident giving rise to the claim, operating a private motor vehicle within the scope of the employees' office or employment, and the employees' action or inaction was not willful, malicious, criminal or done for personal gain. When a motion for transfer is made, the court shall require that notice be given to the Attorney General and the state shall be permitted to intervene and respond to the motion. Upon such transfer, the claim shall be considered timely filed with the Division of Claims Administration and the claims commission. Such transfer shall be effected upon an order of dismissal and transfer from the court. Any such transfer must be made within one (1) year of the filing of the original complaint with the court or the passage of this act, whichever is later. Such claims shall be considered by the Division of Claims Administration and the claims commission, as provided by law. This subsection shall be effective for causes of action arising on or after July 1, 1995, pending at the time of passage of this act and causes of action arising on or after the effective date of this act.

(2) Claims which are transferred to the Division of Claims Administration pursuant to this subdivision shall be investigated by the Division of Claims Administration, acted upon or transferred by the division, and acted upon by the claims commission pursuant to the same statutory requirements and procedures as apply to claims originally filed with the Division of Claims Administration.

SECTION 33. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.


SECTION 34. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 9, 1998


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 22nd day of April 1998


DON SUNDQUIST, GOVERNOR